

405 KAR 30:125. Oil shale exploration performance standards.

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.033, 224.035, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth performance standards applicable to oil shale exploration operations which substantially disturb the land surface.

Section 1. General Responsibility of Persons Conducting Oil Shale Exploration. (1) Each person who conducts oil shale exploration which substantially disturbs the natural land surface and in which 250 tons or less of oil shale are removed shall file the written notification to explore required under 405 KAR 30:121, Section 1, and shall comply with Section 3 of this administrative regulation.

(2) Each person who conducts oil shale exploration which substantially disturbs the natural land surface and in which more than 250 tons of oil shale are removed in the area described by the written approval from the cabinet shall comply with the procedures described in the exploration and reclamation operations plan approved under 405 KAR 30:121, Section 2, and shall comply with Section 3 of this administrative regulation.

Section 2. Required Documents. Each person who conducts oil shale exploration which substantially disturbs the natural land surface and which removes more than 250 tons of oil shale shall, while in the exploration area, possess written approval of the cabinet for the activities granted under 405 KAR 30:121, Section 2. The written approval shall be available for review by the authorized representative of the cabinet or the Department for Natural Resources upon request.

Section 3. Performance Standards for Oil Shale Exploration. The performance standards in this section are applicable to oil shale exploration which substantially disturbs land surface.

(1) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 405 KAR 30:121, Section 2(2)(c)1, shall not be disturbed during oil shale exploration.

(2) The person who conducts oil shale exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under 405 KAR 30:130.

(3)(a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts oil shale exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(b) Any new road in the exploration area shall comply with the provisions of 405 KAR 30:260.

(c) Existing roads may be used for exploration in accordance with the following:

1. All applicable federal, state, and local requirements shall be met.

2. If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to stream flow or run-off, then subsection (7) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

3. If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 405 KAR 30:260 are met for the design, construction, alteration, and maintenance of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

1. To a condition equal to or better than their preexploration condition; or
2. To the condition required for permanent roads under 405 KAR 30:260.

(4) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the cabinet.

(5) Revegetation of areas disturbed by oil shale exploration shall be performed by the person who conducts the exploration or his agent. If more than 250 tons of oil shale are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the cabinet and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved postexploration land use and in accordance with the following:

(a) All disturbed land shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the preexploration and postexploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(6) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during oil shale exploration activities. Overland flow of water shall be diverted in a manner that:

(a) Prevents erosion;

(b) To the extent possible using the best technology currently available, prevents additional contributions or suspended solids to stream flow or run-off outside the exploration area; and

(c) Complies with all other applicable state or federal requirements.

(7) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 405 KAR 30:270.

(8) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that may remain to:

(a) Provide additional environmental quality data;

(b) Reduce or control the on- and off-site effects of the exploration activities; or

(c) Facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

(9) Oil shale exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 405 KAR 30:330. The cabinet may specify additional measures which shall be adopted by the person engaged in oil shale exploration.

(10) Toxic or acid-forming materials shall be handled and disposed of in accordance with the plan approved by the cabinet under 405 KAR 30:121, Section 2(2)(c).

Section 4. Requirements for a Permit. Any person who extracts oil shale for commercial sale during oil shale exploration operations must obtain a permit for those operations from the cabinet under 405 KAR 30:130. No permit is required if the cabinet makes a prior determination that the sale is to test for oil shale properties necessary for the development of oil shale operations for which a permit application is to be submitted at a later time. (8 Ky.R. 578; eff. 6-2-82; TAm eff. 8-9-2007.)